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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,197	07/31/2006	Anthony John Ujhazy	3869/025 US	7101

22440 7590 08/27/2008  
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NEW YORK, NY 10016-0601

EXAMINER
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GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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08/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,197	<b>Applicant(s)</b> UJHAZY ET AL.	
	<b>Examiner</b> /Scott M. Getzow/	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 121-149 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 121-149 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/10/06</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

***Claim Rejections - 35 USC § 102***

1. Claim 121 is rejected under 35 U.S.C. 102(b) as being anticipated by Estes (5,794,615).

Estes is considered to teach all of the subject matter of the above claim. Col. 17, lines 10-18 and lines 45-55 teaches various parameters that can be calculated which can give an indication re the patient's condition. Further, col. 18 teaches that a comparison is made between short term and long term averages of peak flow rate, which also gives an indication of patient condition.

***Claim Rejections - 35 USC § 103***

2. Claims 122,123,125-149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estes (5,794,615) in view of Cho et al (2004/0134496).

Page 1 of Cho teaches that Cheyne-Stokes respiration is associated with congestive heart failure. Page 12 teaches that various metrics can be sensed including breathing cycle length, and that monitoring breathing disturbances can be used for diagnostic and prognostic purposes, as well as for delivering therapy. Also, Cho teaches measuring minute ventilation and tidal volume, as well as causing an alarm to be sounded if the patient is in trouble, see page 3. To analyze the flow produced in the device of Estes for Cheyne-Stokes respiration would have been obvious since such would be a combination of prior art elements according to known methods to yield a predictable result. As taught in paragraph 5 of Cho, changes in air flow are known to be used to determine various conditions of the patient. Further, paragraph 7 teaches that the Cho

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device could be practiced using a breathing mask, if desired, instead of with implantable sensors. Re claim 138, the skilled artisan would know what frequency to use to have the best results based on patient conditions.

3. Claim 124 is rejected under 35 U.S.C. 103(a) as being unpatentable over Estes (5,794,615) in view of Cho et al (2004/0134496), and further in view of Foulkes et al (5,846,720).

Foulkes teaches using b type natriuretic peptide as an indicator for heart disease, column 22. To monitor such a level with the device of Estes and Cho would have been obvious since such is known in the art as a useful indicator of disease.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/  
Primary Examiner  
Art Unit 3762

SMG